



Generally Speaking

Comings and Goings

A warm welcome to **Monica Jenicek**, Special Assistant to Attorney General Talis Colberg.

Welcome as well to new Anchorage Administrative Clerks II, **Josh Korthuis**, **Candace Seils**, and **Tiffany Roberts**.

The Fairbanks DAO welcomed **ADA Paul English** who started this month in the misdemeanor unit.

On January 16, 2007 **AAG Margaret Paton-Walsh** transferred to the vacant employment position in the Labor and State Affairs Section. The section is very pleased she will be continuing in the section in this new position.

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The Legislation and Regulations Section said goodbye to Legislative Liaison **Randy Ruaro**, who transferred to Representative Kyle Johansen's legislative staff in mid-January. **B.J. Jordan**, Legal Text Editor, announced she will be taking retirement on May 1, 2007. The section wishes these staff members much success in their future endeavors.

Leah Prince joined the Child Protection/Human Services Section as an LOA II, and **Corrie Engesath** transferred from OPA to the Child Protection Section as an LOA I. **Shelia Olson**, LOA I in the section was promoted to a paralegal assistant. The section will also be recruiting for a new Nome attorney to replace **AAG Wayne Cary** who will be leaving on March 1, 2007.

CIVIL DIVISION

Child Protection

New CINA cases based upon allegations in OCS petitions:

OCS received a report that a mother had stabbed her husband in the chest in the presence of a child. The child attempted to intervene and called the police. When police arrived, they found the mother sitting naked at the dining room table with two knives in front of her. She was highly intoxicated, with a BAC of .195. The child was left in the care of her stepfather. But he failed to take the child for recommended therapy and necessary medical treatment. Ultimately, OCS learned that the stepfather had been drinking and the child was afraid to stay with him. The mother then consented to the child's placement elsewhere.

OCS received a report that a mother was using oxycontin, methadone and crack cocaine while caring for her children. The mother agreed to do a urinalysis test, but failed to show for the test and moved from her residence with the children. The children were located when OCS was called

to the home of their grandmother, who was being investigated for harm to her own children. The grandmother tested positive for cocaine. OCS took custody of the children of both the mother and grandmother due to the impact of their substance abuse issues on their ability to care for the children.

Two children were taken into custody after their mother became intoxicated and attempted suicide by taking 25 pills. OCS is helping the mother to enter into treatment for mental health and substance abuse issues. The children's father was released from incarceration shortly after the mother's suicide attempt, but he returned to jail just a few days later after consuming alcohol and assaulting a man in his home. The family has received services from OCS since 1992.

Children have been removed from a home where they had grown up with repeated DV and a mother and her boyfriend engaged in substance abuse. As the children grew older, the mother and her boyfriend used methamphetamines and other substances with the children. In addition, the boyfriend's daughter disclosed that her father had sexually abused her in conjunction with supplying her with meth.

OCS received a report that two children were chronically neglected by their father after the death of their mother due to a drug overdose. Upon investigation, OCS determined that the home was a hazard – all of the windows were broken out, there was no food in the home, empty liquor bottles were strewn about, marijuana joints were in several ashtrays, and dog feces and urine were everywhere. The children also reported adults would break into the home and take food and other items. Additionally, whenever the father would get money, he would leave for several days and the children would be left alone. The father has a significant criminal history. After its investigation, OCS removed the children from the home.

Several children were taken into custody after they were born cocaine-positive. Most of the mothers

acknowledged using substances during their pregnancies.

OCS became involved with a family after numerous people reported the mother would scream and lose her temper over things her less than year-old child would do. OCS referred the family to services to deal with the mother's developmental delays and mental illness. Later, there were reports of substandard housing conditions and domestic violence in the presence of the child.

More recently, OCS became involved with a family where the child's father reported that the mother had stopped taking her medications and that her behavior was explosive and violent at times. He also reported she had threatened to kill the baby. OCS originally agreed to leave the child in the home in the care of his father, however the mother removed the child. When OCS located them, the mother made numerous complaints about the father. OCS assumed custody of the child and will work with both parents.

Commercial and Fair Business

Consumer Protection/Anti-Trust

Beginning in January 2007, the Consumer Protection attorneys have been participating in a statewide education program with AARP entitled *Investor and Consumer Protection Education for Alaskans*. The program involves a two-day workshop presenting various classes on financial investments and consumer protection issues. The financial investment classes focus on financial markets, how to make a financial/investment plan, investment fraud, basics for investing, and planning for a secure retirement. The consumer protection classes focus on identity theft, protecting your credit, top frauds and scams, payday lending issues, and Medicare and Medicaid fraud. The workshops are being held in various locations in the state and will continue through April 2007. In January 2007, workshops were held in Anchorage, Sitka, and Ketchikan.

Professional Teaching Practices Commission (PTPC)

On January 17, 2007, AAG Karen Hawkins represented commission staff in an administrative adjudication before the PTPC and ALJ Chris Kennedy. Commission staff had filed a single count accusation against Burdette Maffit, a special education teacher for the Nome School District, alleging that she violated 20 AAC 10.020(b)(8) of the Code of Ethics. This subsection in the Code of Ethics provides that an educator "shall keep in confidence information that has been obtained in the course of providing professional service, unless disclosure serves a compelling professional purpose or is required by law."

Commission staff argued at the hearing that when Ms. Maffit personally hand-delivered highly confidential student special education documents to Nome School Board members on a weekend night, she violated 20 AAC 10.020(b)(8). In support of its case, commission staff called the Nome Superintendent, the Nome Special Education Director, the former Nome Special Education Director, the Statewide Director of Special Education, and a member of the Nome School Board. The Statewide Special Education Director and the Nome Special Education Director both testified Ms. Maffit should not have released individual student special education documents because the documents were considered confidential under both federal and state laws. In support of her case, Ms. Maffit called herself, and she testified she released the confidential special education documents because she wanted the school board members to see she had to fill out special education documents differently than other special education teachers.

She further testified that, if the documents given to the school board members had been redacted, then the school board members would not have understood the documents. The commission found Ms. Maffit's release of highly confidential student special education documents did not serve a compelling professional purpose and, therefore, it found she violated 20 AAC 10.020(b)(8).

The commission is expected to issue a decision and order in which it reprimands Ms. Maffit for her conduct.

Division of Corporations, Business and Professional Licensing

Juneau AAG Gayle Horetski was in Anchorage in January 2007 for a superior court oral argument in *Tanner v. Vista Real Estate, et. al.* AAG Horetski is representing the state as an intervenor in this matter, because the plaintiff has challenged the constitutionality of a state law. The constitutional challenge involves legislation that retroactively limits damages to actual damages for violations of Alaska's dual agency laws in real estate transactions. The constitutionality of the statute was upheld by Judge Hensley on summary judgment entered in 2004. The case was subsequently assigned to Judge Joannides after Judge Hensley retired. The plaintiff renewed his motion challenging the constitutionality of the statute. Judge Joannides entertained the motion and asked for briefing and oral argument. The section anticipates the case will be appealed to the Alaska Supreme Court.

Environmental

Vehicle Inspection & Maintenance Civil

Enforcement. According to state statutes and regulations, individuals living outside of the Anchorage and Fairbanks I/M areas, but commuting into those I/M areas, are required to obtain I/M stickers (this includes both individuals working and going to school). The Air Quality Division of DEC has documented violators of the regulations, and sent out notices of violation, but in many instances, not obtained compliance from these individuals. The Department of Law is now assisting in the effort, initially by writing letters to the commuters and, later, potentially filing lawsuits for civil penalties against them. AAG Jennifer Currie and Paralegal Pam Post are assisting DEC with this civil enforcement effort.

Human Services

Litigation Update

Section Chief Stacie Kraly had oral argument in superior court on the second TRO in the *Baker* matter on January 22, 2007, and oral argument in federal court on the motion to dismiss in the *Longenecker* matter on January 24, 2007.

AAG Rebecca Polizzotto and AAG Stacie Kraly start a four-day hearing in Fairbanks on January 30, 2007, related to the Commissioner's decision to award Certificate of Needs to build two separate ambulatory surgical centers in Fairbanks. The remaining CON litigation matters are progressing at various stages both in the administrative setting and in court.

Medicaid

Subrogation/Liens

The Medicaid Lien/Subrogation team resolved 17 cases and collected \$66,577.45 during the month of January 2007 (to date). They opened 36 new matters and currently have 631 open matters. They anticipate an increase in the active caseload over the next 60 days as leads are being generated as a result of increased trauma questionnaire activity.

Audits

AAG Rebecca Polizzotto continues to work on the 10 Medicaid Audit administrative appeals; briefing will begin in February 2007. The section continues to enjoy the litigation support of Anne-Marie Palumbo.

Agency Matters

The section continues to be inundated with questions related to the administration of the Personal Care Attendant program.

Licensing

There were no licensing hearings in January. However, AAG Polizzotto has been flooded with day-to-day agency advice on a variety of matters and issues related to the administration of programs, especially foster care licensing.

Labor and State Affairs

Elections

On January 18, 2007 AAG Mike Barnhill argued a motion to dismiss in federal district court in *Alaska Independence Party and Alaskan Libertarian Party v. Division of Elections*. The parties object to the statutory primary system and claim a constitutional right to specify their own procedures for nominating candidates. They want to use an internal convention procedure. The bases for the motion to dismiss included the superiority of the primary system to select candidates and the absence of a case or controversy because the parties in their bylaws acknowledge that candidates are selected in the state's primary election.

Employment

On December 28, 2006 the federal Equal Employment Opportunity Commission issued a decision in a 1994 case, *Ward Jones v. State*. The EEOC denied the state's sovereign immunity defense on the basis that the commission lacked authority to determine whether the Eleventh Amendment barred the administrative claim. It also declined to rule whether a deceased complainant's claim abated after death or was discharged in bankruptcy by her heir. AAG Richard Postma represented the state.

Cahill v. State. On January 5, 2007 Judge Rindner issued a decision in favor of the state, dismissing a former state social worker's constructive discharge action against the Department of Health and Social Services. AAGs Brenda Page and Richard Postma had concluded a wrongful termination trial before the judge in December 2006.

ACOA v. State. On January 19, 2007 AAG Bill Milks represented the Department of Administration before the Alaska Labor Relations Agency in hearing on the Alaska Correctional Officers Association's charge that state retirement benefits are a mandatory subject of bargaining in labor negotiations. The state maintains that state employee retirement benefits are set by statute, not through negotiation.

Finance

At oral argument before the Alaska Supreme Court on January 5, 2007, AAG Richard Postma presented the state's position on the intervention of the Anchorage Baptist Temple in **Anchorage Baptist Temple v. Coonrod**. The ACLU had challenged a property tax exemption that the legislature adopted in 2005 for teacher housing owned by religious organizations. Several churches had sought to intervene in defense of the exemption, but the superior court denied intervention. The state supported intervention.

Medicaid Rates

On January 2, 2007 Judge Rindner decided **Valley Hospital v. State** in favor of Valley Hospital. The case was an appeal from a decision of the Commissioner of the Department of Health and Social Services that Valley Hospital had failed to timely file a notice of appeal from the 2003 Medicaid rate determination. The court determined that, because an appeal was futile, the hospital did not need to file one. AAG Susan Daniels is representing the state.

Retirement and Benefits

On December 29, 2006 the Alaska Supreme Court issued a decision in favor of the state in a class action challenge to the state's retirement system, **Public Employees' Retirement System v. Gallant**. The appeal concerned the constitutionality of the ten percent cost-of-living increase in retirement benefits to retirees who remain in Alaska after retirement. The Court reversed Judge Suddock's decision that the COLA was unconstitutional because it penalized the right

to travel. The judge had ordered that the state prospectively pay a COLA to all retirees living outside of the state who lived in a metropolitan area with a higher cost of living than Alaska. The Supreme Court found that the state has a legitimate interest in encouraging retirees to stay in the state and that, because COLA payments are related to cost-of-living differentials and only a small part of retirees' income, they do not infringe substantially on the right to travel. AAG Neil Slotnick handled the appeal.

Special thanks to Paralegal Jean Clarkin for her initiative in supporting the law office assistants and her recycling efforts.

Legislation and Regulations

During January 2007, the Legislation and Regulations Section spent an active month reviewing legislation for the 2007 regular session of the Alaska State Legislature.

Regulations projects reviewed in the section included: (1) Board of Certified Direct-Entry Midwives (examinations, certification renewal, and peer review); (2) Board of Nursing (applications for licensure and duties of executive secretary); (3) Board of Psychologist and Psychological Associate Examiners (continuing education and license renewal requirements); (4) State Board of Registration for Architects, Engineers, and Land Surveyors (education requirements for architects); (5) Board of Fisheries (Aleutian Island District Walleye Pollock Fishery Management Plan); (6) Department of Education and Early Development (state assessment, test security, and assessments for limited English proficiency; high objective uniform standards for teachers; performance standards for grades K-2); and (7) Department of Health and Social Services (background checks for certain licensees and others).

Natural Resources

Title to Coldfoot Rights-of-Way Secured

A settlement was reached in the Coldfoot RS 2477 case and filed with the U.S. District Court on January 8, 2007. Judge Beistline signed the consent decree and final judgment on January 9, 2007 quieting title in the state to a permanent 60 foot right-of-way across federal and Doyon-selected lands. The right-of-way goes east from Coldfoot on a common route to state land and then splits with one trail (denoted RST 9 in DNR's RS 2477 inventory) continuing to Chandalar Lake, and the other (RST 262) going to Caro. The state sued the United States, Doyon, and numerous individuals and companies in 2005 to quiet title to the trails.

These trails were established in the early part of the 20th century to provide access for miners, and are still used today. Under the settlement, the right-of-way will be treated as if it were a right-of-way established pursuant to R.S. 2477 for purposes of determining the scope of property rights, permissible uses and extent of any federal regulatory authority. RS 2477 refers to a section of the 1866 federal mining law by which the government granted rights-of-way across federal lands not otherwise reserved for public use, to encourage miners and settlers to expand into the Western states and Alaska. Although RS 2477 was repealed in 1976, existing rights-of-way created under it are preserved under federal law. AAGs Colleen Moore and Elizabeth Barry represented the State in this matter.

Federal Subsistence Matters

AAGs Steven Daugherty and Mike Sewright assisted the Department of Fish and Game in the preparation of three formal requests for reconsideration which the department submitted to the Federal Subsistence Board on January 16, 2007. The department is requesting that the board reconsider and rescind three November decisions. In one decision drawing special attention, the board granted the residents of

Ninilchik and Happy Valley a subsistence priority right to harvest fish within the highly popular upper Kenai River and Russian River areas located within the Kenai National Wildlife Refuge and Chugach National Forest.

The department contends it has not been shown that those communities have customarily and traditionally harvested their fish from those fishing areas, which are located almost 100 miles away. The department is also challenging the board's determinations granting those same communities harvest rights to rainbow trout, lake trout and dolly varden in Tustumena Lake this winter using gillnets and other means, and to Gustavus in Southeast Alaska.

Senior AAGs Lance Nelson and Kevin Saxby and AAG Sewright briefed the new administration on pending state and federal subsistence issues in January 2007, and AAGs Daugherty and Sewright and Senior AAG Saxby continued to advise ADF&G regarding new federal subsistence proposals. In addition, AAG Sewright attended portions of the Federal Subsistence Board meetings held in Anchorage on January 9-11 to consider several new fishing proposals. Among the controversial proposals was a proposal to close the commercial herring fishery in favor of federal subsistence fishing within waters over which the Federal Subsistence Board claims jurisdiction near Sitka. The proposal was deferred for further consideration.

Navigability

This month Section Supervisor Elizabeth Barry and AAGs Mike Sewright and John Baker continued to review recent changes to the way in which the federal Bureau of Land Management makes navigability determinations involving state ownership of submerged lands and waters as part of BLM's responsibility to convey lands to Alaska Native corporations. The changes could adversely affect state interests. Additional analysis and discussions with BLM's attorneys are expected.

Dodson v. CFEC. On October 24, 2006, the state received a favorable decision from the superior court affirming the CFEC's decision not to award Dodson a Chatham Strait sablefish permit. The state was awarded \$1,000 in attorney's fees, and collected the cost bond. On December 29, 2006, more than 60 days after the superior court decision, Dodson's attorney filed a notice of appeal with a motion to allow the late filing on the ground that he had not received a copy of the superior court's decision. The state opposed the motion on the grounds that, during the 30-day appeal time, Dodson had received a notice from the court concerning release of the cost bond that identified the date of the decision, he received and timely opposed the state's motion for attorney's fees, and he received the court's award of attorney's fees to the state, all of which should have given him notice of the decision in time to file an appeal.

The state also offered as grounds for denying the late appeal that Dodson admitted he became aware of the decision on December 15, 2006 but still waited for two more weeks before he filed the notice of appeal. Despite all of that, the Supreme Court allowed the late-filed appeal, but has indicated that it will not grant Dodson any routine extensions of time on his briefs. AAG Colleen Moore represents the state.

May v. CFEC. On January 25, 2007, AAG Vanessa Lamantia filed the state's brief in the Alaska Supreme Court in this appeal of a CFEC decision denying the appellant's eligibility to apply for a permit in the Southern Southeastern Inside Sablefish (black cod) longline fishery. The superior court affirmed the CFEC's findings that May was ineligible to apply for a permit, and even if he was eligible, he is not entitled to any points, and therefore he lacks standing to challenge the regulation setting the maximum number of permits for the fishery.

Opinions, Appeals and Ethics

Ethics

AAGs Judy Bockmon and Dave Jones assisted the Governor's Office with many transition-related issues, including ethics and public records matters. They also helped to draft ethics reform legislation.

Appeals/Litigation

Sheldon v. City of Ambler. AAG Mary Lundquist submitted a brief of amicus curiae in this appeal before the Alaska Supreme Court. This appeal involves an excessive force claim against the City of Ambler. The state has filed a motion for leave to file a brief in order to address the legal issue of whether *Samaniego v. City of Kodiak*, 2 P.3d 78 (Alaska 2000), should be overruled. *Samaniego* is the Alaska Supreme Court's leading pronouncement on the qualified immunity defense to state law excessive force claims.

In *Samaniego*, the Court merged the substantive analysis for whether a police officer used excessive force with the analysis of whether an officer is entitled to qualified immunity, thereby essentially eliminating the availability of a qualified immunity defense in excessive force cases. *Samaniego* relied on then-current Ninth Circuit analysis in *Katz v. United States*, a case that was reversed by the United States Supreme Court the year after *Samaniego* was decided by our court. The state is requesting that the Alaska Supreme Court overrule *Samaniego* because it was wrongly decided in that it followed now-abandoned federal case law.

DeNardo v. Judge Joannides. AAG Mary Lundquist is preparing for argument on a motion for summary judgment and a motion for a pre-filing order in this case. Mr. DeNardo joined Judge Joannides as a defendant in ongoing litigation after she refused to recuse herself and Mr. DeNardo's peremptory challenge was denied as untimely. Judge Joannides moved to dismiss the case since Mr. DeNardo failed to state a

claim upon which relief can be granted, and the actions complained of were actually taken by other judges. The motion for a pre-filing order would require court review and leave of the court before Mr. DeNardo is allowed to file any action against the judiciary. This is an attempt to control Mr. DeNardo's vexatious, and meritless litigation against the judiciary. The parties are preparing to exchange documents supporting the motion for a pre-filing order. Oral argument will be held in early March 2007.

Wetherhorn v. Alaska Psychiatric Institute. The Alaska Supreme Court issued a decision in this case on January 12, 2007. On appeal, Ms. Wetherhorn raised numerous challenges to the trial court's orders that (1) she be involuntarily committed to API for 30 days and (2) she be medicated against her will. The Court upheld the constitutionality of the statutory provisions that authorize 30-day involuntary commitments for persons who "will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of the person's previous ability to function independently." The Court held that this provision is constitutional so long as it is "construed to require a level of incapacity so substantial that the respondent cannot survive safely in freedom."

The Court also confirmed that before a committed patient may be involuntarily medicated, AS 47.30.839(d)'s requirement that a court-appointed "visitor" must interview the patient and issue a report to assist the court in determining whether the patient is capable of granting informed consent to the proposed medication must be satisfied. Because no such report was prepared in this case, the Supreme Court vacated the trial court's order that Ms. Wetherhorn be involuntarily medicated. The Court either rejected or declined to consider the other challenges made by Ms. Wetherhorn.

AAG Laura Bottger briefed the appeal for API.

Clugston v. Smith. The United States Court of Appeals for the Ninth Circuit summarily affirmed the district court's dismissal of claims against Judge Smith, several CSSD employees, and former AAG Kevin Williams. The plaintiff had alleged the defendants engaged in an inappropriate bill of attainder when Judge Smith modified a child support order, increasing the amount owed by the plaintiff, and when the rest of the defendants acted upon that order.

The plaintiff asked the child support order be vacated, Judge Smith be impeached and disbarred, Kevin Williams be disbarred and terminated, and the CSSD employees be terminated. The district court dismissed the case in its entirety, concluding that Judge Smith was entitled to judicial immunity and the plaintiff's claims were frivolous. After the plaintiff filed his opening brief, defendants filed a motion for summary affirmance. The court granted the motion, concluding "the questions raised by this appeal are so insubstantial as not to require further argument." AAG Megan Webb handled this appeal.

Regulatory Affairs and Public Advocacy (RAPA)

Stipulated Settlement Approved

U-06-06, ML&P Depreciation Study. The RCA accepted a stipulation filed by (Anchorage) Municipal Light & Power and the AG/RAPA which resolved disputed issues related to the depreciation study filed by the utility based upon its electric plant balances. The effect of the approved stipulation *reduces* ML&P's total depreciation expense by over \$2 million for the purposes of its next rate case in 2008.

RAPA Advocacy Yields Ratepayer Refunds

U-05-43/44, GHU/CUC Rate Case. Golden Heart Utilities and College Utilities Corp. are investor-owned utilities that provide water and sewer utility service in the Fairbanks service area. The utilities filed a rate case seeking double-digit

rate increases for both services. AG/RAPA testimony addressed a number of disputed issues including operating expenses, the proposal to use a year-end rate base, and the utility's appropriate rate of return. The RCA's January 8, 2007 decision (issued subsequent to an adjudicatory hearing) adopted numerous RAPA advocacy positions which resulted in the commission ordering refunds to ratepayers of the excess funds collected by the utility between August 1, 2005 to July 31, 2006. The exact amount has yet to be determined.

New Case

U-07-01, MEA/ML&P Power Outage Dispute.

The RCA opened a docket on January 8, 2007 to investigate the causes of power outages (and the related delay in restoration of power) experienced by nearly 10,000 customers of Matanuska Electric Association during December 2006 and January 2007 in the Eagle River service area.

RAPA filed a Notice of Election to Participate in the docket on behalf of the AG/public advocate and participated in the initial evidentiary hearing held on January 11, 2007. Seeking to resolve and settle issues relating to the operation and upgrade of the subject Eklutna transmission line and the RCA investigation, the relevant utilities (MEA, Municipal Light and Power, and Chugach Electric) have agreed to operate under a Dispatch and Construction Coordination Agreement to minimize the incidence and duration of future outages while the Eklutna transmission line is being upgraded. The parties await further commission action.

Intervention Summary Update

As of January 24, 2007 RAPA is involved in 24 dockets before the RCA (and one appeal in the Superior Court). That number includes 20 adjudicatory matters in which the Attorney General is participating as a party, three rulemaking proceedings in which RAPA is participating in

workshops and hearings, and one docket proposing DOL-related statutory revisions.

RAPA also monitors related matters before the RCA, the Alaska Legislature, the FCC, and the US Congress, and provides policy analysis to the Attorney General, and through the Attorney General to the Governor's Office, as requested. Most recently, the RAPA section Chief analyzed the current Conoco/Marathon application for an extension (from 2009-2011) of its authorization from the US Department of Energy to export Cook Inlet LNG to Japan.

Transportation

Condemnation case concluded. DOT&PF settled a long-running condemnation case concerning a parcel acquired to allow the Parks Highway to be widened near Wasilla. This condemnation had previously traveled through a master's hearing and jury trial. The matter finally settled on the first day of its second jury trial. AAGs Gary Gantz and Susan Urig represented DOT&PF.

CRIMINAL DIVISION

Fairbanks DAO

Once again the January trial calendar was busy.

January 2007, saw 40 New DUI cases, 28 misdemeanor assault cases and 24 DWLS cases being filed among the 144 total misdemeanors accepted to date by the misdemeanor unit. The felony unit accepted 13 new felony cases for the month. However, the grand jury has been busy with cases that have been referred in for screening and new arrests. To date, 41 cases have been presented to the grand jury this month.

ADA Leslie English, who started at the office in December 2006, won her first trial, which was on a DUI.

Fairbanks made it two weeks into the New Year before the first homicide occurred; the Alaska State Troopers are investigating the case.

During 2006, the misdemeanor unit received 4,701 cases with 3,766 of those cases being filed. Of that number, 845 of the cases filed were DUIs. In 2006, the felony unit received 1,077 cases of which 549 were filed. Included in the number of cases filed were 131 drug cases and 78 felony DUIs. With the felony probation revocation and juvenile cases, it is little wonder it seemed like it was a busy year.

Kenai DAO

Grand Jury

It was no surprise that the New Year brought in a good number of DUIs, including three felonies on New Year's Eve and three the next week as well.

Interestingly, one defendant accounted for two of the felonies. He had actually been arrested for what appeared in November 2006 to be his second DUI but when he was arrested on New Year's Eve, his conviction from August 2006 for an earlier DUI surfaced in APSIN, so the prior misdemeanor charge of DUI became a felony charge, as did the new one. This is his fourth DUI in seven months; a pretty impressive record, especially when you consider his BACs were all in the .18-.19 range, and he's only 28-years-old.

The grand jury also heard another New Year's caper in which an already-convicted/pending-sentencing thief and his juvie brother got into 17 cars and ripped off what they could find. When the Troopers trailed the footprints to a residence, the culprits were found, as were some very impressive items such as a plasma screen TV, boxes of CDs and DVDs, and various video games. This collection rang a bell and the Troopers confirmed that the goods were the proceeds of a burglary from a few days before and valued at over \$5,000. When the parents in whose house the two were living were asked what they thought was going on, they explained that they thought that their kids were really good at trading with their friends.

Every week has brought more felony drug cases and more felony assaults before the grand jury. This week there was a mobile meth lab and one of the certified clandestine lab officers gave the grand jury his version of "everything you ever wanted to know about how to manufacture meth". The DAO, of course, noticed who on the jury was taking really good notes.

Trials

There were many very successful trials this month in Kenai. In superior court there were two co-defendant cases. ADA Jean Seaton tried and convicted one defendant and his girlfriend of three burglaries in which a lot of property was stolen and a lot of vandalism was done. One of his victims was an architect who had built his dream cabin with everything tucked away in its own place. The defendants trashed the home, even dragging the refrigerator outside to prop the door open so everything froze. The crime was particularly sad because this victim has a crippling disease and he saw this home as his refuge. Now his dream has been ruined.

Another defendant and his girlfriend were tried for one home burglary on the Peninsula as well as possessing stolen property from numerous home, business, car, and mailbox burglaries in Anchorage. They were also charged with using credit cards, forgeries, and dealing drugs. He was convicted on all counts; she on everything but the drugs. He has five prior felony convictions and was on felony probation in two cases when he committed these new crimes. There were twenty-two victims and about four hundred pieces of evidence. It's no wonder the trial took four weeks.

ADA Angela Jamieson tried a domestic violence assault and DUI case. The case was a few years old and in that time the victim had recanted, un-recanted, recanted, and un-recanted. ADA Jamieson fought through all that and got convictions on all counts, although the jury went with two of the lesser-included assaults. While trying this case, ADA Jamieson had to delay her

vacation to California, however, she made it to the airport as the jury was deliberating, and then learned the verdict while sitting in the sunshine.

ADA Scot Leaders tried a defendant on felony criminal mischief, felony DUI, and related misdemeanor charges for damaging his girlfriend's vehicle and driving away drunk. No one actually saw him driving, which made it tricky. ADA Leaders got convictions on all counts. To get the trial off to an auspicious beginning, the defendant arrived on the first day smelling of alcohol. He kept pretending to blow into the PBT, and eventually the officers got enough air to see that he was over .08; according to their observations well over. The judge refused to do anything but at the end of the day, he granted ADA Leader's request to remand the defendant. However, he released the defendant the next day to the third-party custody of his mother.

ADA Jean Seaton had a second trial this month—a misdemeanor DUI. There was also a refusal, and two counts of violating conditions of release. The defendant's ace in the hole was his friend who came to court to say that he was actually the driver. However, by the time ADA Seaton got finished dissecting the witness on the stand, the defendant put his head down on the table and announced that he would plead to all counts.

Ketchikan DAO

Earl Pickering was convicted of murder in the first degree, tampering with physical evidence, violating a protective order, and misconduct involving weapons in the third degree. His wife had gotten a protective order against him but his minister arranged with his wife to go to his house to try to reconcile. Pickering was not happy to meet his wife's new boyfriend who left the house when he arrived. When her family did not hear from her, the police went to the house and found she had been beaten and shot through the head while lying in her bed. The autopsy showed a contact wound to her head killed her.

Meanwhile, Pickering took a taxi from the house to a bar where a bartender asked about the small blood drops on his face, and he then washed them off. However, he left one blood spot on his ear and small blood spots were recovered from his clothes shortly after he tried to wash them off. DNA tests confirmed that the blood on Pickering was his wife's blood.

Pickering's defense was that his wife's death was an accident. He was working the lever action of the gun and it went off accidentally. This defense was a difficult one since the rifle was up against her head when it was fired. He also said he did not beat her, but she was so drunk that she fell down injuring herself.

John Hanson was found guilty of assault in the second degree and assault in the third degree. He was upset with his wife for going to a bar and returning late, and he was suicidal. He threatened her with a handgun and hit her in the head with the gun. She was able to get away from him and ran outside. A neighbor found her hiding behind her car and called the police. The police arrested him but could not find the handgun although they found bullets. Luckily, his wife found a suicide note stating goodbye to the world and his wife, and that he had forgotten about having the gun.

Kodiak DAO

A 45-year-old man from Southeast Alaska was convicted of tampering with evidence in the first degree and contributing to the delinquency of a minor following allegations that he sexually abused a 15-year-old minor at the Afognak Island logging camp where he worked. After the victim admitted to her mother she had just engaged in sexual intercourse with the defendant, and the mother confronted the defendant about the allegations, the defendant was left alone in his home for eight plus hours before the State Troopers arrived.

After no DNA or fiber evidence was found by the state crime lab, the state charged the defendant with tampering with evidence for sanitized his

home and destroying available physical evidence before troopers arrived. The defendant was sentenced to four years with three years suspended on the tampering charge, with an additional nine months on the contributing charge. Time is to be served consecutively. Following his release from incarceration this defendant will be placed on supervised probation for five years.

A thirty-five-year-old Kodiak man was convicted of misconduct involving a controlled substance in the fourth degree after police served a search warrant on his home and discovered a marijuana grow operation which included more than 25 marijuana plants. The defendant was ordered to serve 90 days in jail, followed by supervised probation for five years. He was also ordered to complete a substance abuse evaluation and to do any treatment as will be recommended, including up to 60 days residential treatment.

A 20-year-old Kodiak man was convicted of misconduct involving a controlled substance in the fourth degree following his arrest for possessing one gram of opium. He was ordered to serve 90 days in jail, to pay a fine of \$1,000 and was placed on supervised probation for five years. After his release from incarceration this defendant must also complete a substance abuse evaluation and do any treatment recommended, including up to 60 days residential treatment if required.

Nome DAO

Austin Ahmasuk killed a musk ox on New Year's Day. After gutting and skinning the animal, he took with him the head, horns, hide and four quarters. Behind in the field, Ahmasuk left the intact neck, ribcage, brisket, and back including the attached backstraps, tenderloins and pelvis. Ahmasuk, director of subsistence for a local native corporation, later claimed to the investigating officer that he was unaware he was required to salvage the remaining meat. Ahmasuk was charged with wanton waste and hunting without a valid license.

Ahmasuk should have taken Dan Qualls hunting. On a recent shopping trip to Hanson's, a local supermarket, Qualls caught the attention of staff by lugging along a large green duffel bag as he pushed his cart through the store. Suspicious, the store manager confronted Qualls, who produced from the duffel three packs of t-bone steaks and a \$60 prime rib. Qualls, already on probation for theft of electricity, was charged with concealment of merchandise.

Also at Hanson's this month, Alvin Amaktoolik, drunk and wearing urine-soaked pants, decided he needed a new set of clothes. Amaktoolik hid out in the clothing department until after closing, stripped out of his damp garments, and dressed himself in a new set of clothes from underwear on out. Satisfied, Amaktoolik fled the store. Investigating officers discovered, however, that the pants left behind were not only wet, but also contained Amaktoolik's ID card. For this misconduct, Amaktoolik agreed to serve the 16 months he had remaining of felony suspended time.

Finally, a Hanson's employee was charged with felony theft. Though he usually works the register in the supermarket video and electronics department, Daniel "Koonuk" Angusuc was for this past season elected President of the Nome Softball Association. As president, Angusuc enjoyed complete control over cash received from players, teams and sponsors. Little of this money made it to the team bank account, and a bank officer alerted other association members to the suspiciously low balance. Angusuc admitted to the members he had spent association funds on himself, but insisted he would repay them with proceeds he expected from the settlement of a civil lawsuit he had filed against the city, arising from his role as a suspect in the murder of Sonja Ivanoff. To date, Angusuc has not made good on the loss which may exceed \$10,000.

Palmer DAO

Twenty-five people have been indicted on new felony charges so far this month.

ADAs Rachel Gernat, Suzanne Powell, Jarom Bangerter and Michael Perry conducted training for troopers and police officers on January 16, 2007 in Palmer and January 18, 2007 in Wasilla.

On January 24, 2007, January Strawser graduated from the Palmer CRP mental health court. Strawser was arrested in November of 2005 after she flagged down a school bus, forced her way onto the bus, and got into a physical altercation with a junior high school student. She was subsequently diagnosed with a number of mental illnesses. While in a mental health court program, Strawser worked hard and engaged in all aspects of treatment, including a daily medication routine. She is now stable and has become a productive member of the community. ADA Rick Allen was the prosecutor in this case.

On January 12, 2007, Joseph O'Brien was sentenced to three years and six months, with two years suspended after being convicted by a jury of criminally negligent homicide and driving while with a suspended license. In 2003 O'Brien drove a truck with a partially iced windshield, defective defroster and heater, and poor brakes. He struck and killed Calvin Toal, who was riding a snowmobile on the shoulder of the Parks Highway near Big Lake. ADA Suzanne Powell handled this trial for the state.

For his role in manufacturing methamphetamine, Bruce Couch was sentenced to eight years with three years suspended on a single count of attempted misconduct involving a controlled substance in the second degree. ADA Suzanne Powell tried this case.

Timothy Jean was sentenced to 20 years, with five years suspended, for sexual abuse of a minor in the first degree and five years, with three years suspended, for possession of child

pornography. ADA Richard Payne was the prosecutor.

DA Roman Kalytiak prosecuted the case in which Martha Harper pled no contest to charges of assault in the first degree, assault in the third degree and DUI. In August of last year, Harper drove while intoxicated, endangered a number of motorists and their passengers, and led police on a lengthy chase. She ultimately crossed the center grass median on the Glenn Highway and struck an oncoming vehicle head-on, injuring the other driver. Sentencing is scheduled for April 5th, 2007. There is no sentence bargain in this case.

Viktor Natekin was indicted on charges of attempted sexual assault in the first degree and sexual assault in the second degree.

Aric Tolen was indicted on a number of felony counts, including sexual assault in the first degree and assault in the third degree for actions against his wife committed in the presence of their young children. Tolen faces a sentence of 40 to 60 years on the rape charge due to his criminal history.

Donald Levinson was indicted on charges of sexual abuse of a minor in the first and second degrees, and incest. ADA Rachel Gernat was the prosecutor.

Despite Sherry Kelley's admissions that she kept one son in a box, allowed him to be chained to a tree, and that she did not secure medical treatment for another son who was burned, Judge Wolverton declined to sentence her to more jail time than she already served. He sentenced her to five years in jail, with four years suspended, on the charge of assault in the third degree, and one year (consecutive) for criminal nonsupport. Her husband Patrick Kelley received a sentence of two years on a consolidated count of endangering the welfare of a child. The prosecutor was ADA Rachel Gernat.

SAVE THE DATE

March 5-7, 2007 NAAG Spring Meeting
Washington, DC